

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:12-cv-767-RJC
(3:06-cr-363-RJC-1)**

ANTHONY WAYNE ELLIS,)
)
 Petitioner,)
)
vs.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)
_____)

60-DAY ORDER

THIS MATTER is before the Court on Petitioner’s Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255 or, alternatively, under 28 U.S.C. § 2241, or as a petition for writ of coram nobis or a writ of audita querela (Doc. No. 3). Petitioner is represented by Leah A. Kane of the Federal Defenders of Western North Carolina.

Petitioner is serving a 144-month sentence after being convicted on March 13, 2008, of conspiracy to possess with intent to distribute cocaine, cocaine based, and marijuana, in violation of 21 §§ 841(a) and 846 (Count One); possession of a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (Count Eleven); possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) (Count Twelve), and possession of body armor by a violent felon, in violation of 18 U.S.C. § 931 (Count Thirteen).

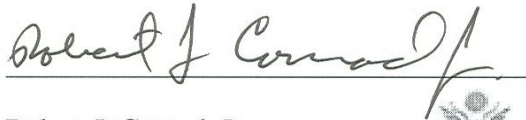
In the petition, Petitioner alleges that he is entitled to relief in light of the Fourth Circuit’s en banc decision in United States v. Simmons, 649 F.3d 237 (4th Cir. 2011). Specifically, Petitioner contends that because Petitioner’s prior offenses are no longer deemed “punishable by imprisonment for a term exceeding one year” under § 922(g)(1), or § 924(e), or 931, he is actually innocent of the crimes for which he was convicted. Petitioner, therefore, seeks to have

this Court vacate his conviction and dismiss the indictment.

The Court determines that the United States Attorney shall file a response to Petitioner's allegations. The Court directs the United States file an Answer or other responsive pleading to the § 2255 motion to vacate within sixty (60) days.

IT IS, THEREFORE, ORDERED that no later than sixty (60) days, the United States Attorney shall file an Answer or other responsive pleading to Petitioner's Motion to Vacate.

Signed: December 28, 2012

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge



